

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Oliver Hooper

v.

Civil No. 08-cv-426-JD

Warden, Northern
New Hampshire Correctional Facility

O R D E R

Petitioner, Oliver Hooper, seeks relief from his state court convictions pursuant to 28 U.S.C. § 2254. On July 31, 2009, while the Warden's motion for summary judgment was pending, Petitioner's retained counsel notified the court, by letter, that he had been suspended from practice, and the court deemed the letter to be an involuntary withdrawal from the case. Petitioner moved for appointment of counsel and submitted financial forms to demonstrate his need for appointed counsel. His request for appointed counsel was granted, and Attorney Jorel V. Booker was appointed to represent Petitioner in this case on October 30, 2009.

An extension of time was granted, until January 18, 2010, to respond to the Warden's motion for summary judgment. On December 17, 2009, Petitioner filed a motion, pro se, for appointment of new counsel, contending that Attorney Booker was not communicating with him. Attorney Booker filed a response,

explaining that he had visited Petitioner on December 18, 2009, and, on the basis of that representation, the court denied the motion. Attorney Booker filed a response, on Petitioner's behalf, to the Warden's motion for summary judgment on January 18, 2010.

On January 20, 2010, Petitioner filed a motion, pro se, to terminate Attorney Booker as his counsel. Petitioner represents that he has not been able to communicate with Attorney Booker, that he was not allowed to review the response to the Warden's motion for summary judgment before it was filed, and that he believes Attorney Booker is not looking out for his best interests. Petitioner asks to be permitted to proceed pro se if new counsel is not appointed and asks for a six-month extension of time to develop a new petition for habeas relief.

In response to Petitioner's motion to terminate him as appointed counsel, Attorney Booker takes issue with Petitioner's version of their relationship but does state: "It is clear that there is a breakdown in communication between Mr. Hooper and Counsel that cannot be repaired"

Therefore, because both Petitioner and Attorney Booker agree that the breakdown in communication between them is irremediable, the appointment of Attorney Booker in this case is terminated.

Petitioner's involvement in his case and his use of the prison law library to instruct his counsel for purposes of opposing summary judgment demonstrate that he is able to represent himself. Therefore, his request to proceed pro se is granted.

Conclusion

For the foregoing reasons, Petitioner's motion to terminate appointed counsel (document no. 31) is granted to the extent that:

1. Representation by Attorney Jorel V. Booker is terminated;
2. Petitioner shall proceed pro se;
3. On or before **February 9, 2010**, Petitioner shall notify the court whether he intends to:
 - a. Rely on the response to the Warden's motion for summary judgment that was filed by Attorney Booker;
 - b. Use the response filed by Attorney Booker but also file a supplemental response to the motion for summary judgment;
 - c. File a new and substitute response to the motion for summary judgment, OR
 - d. File for leave to file an amended petition for habeas relief.

4. On or before **March 9, 2010**, Petitioner shall file, in accordance with his notice to the court, a substitute or supplemental response to the motion for summary judgment or a motion for leave to file an amended petition for relief under 28 U.S.C. § 2254, with a copy of the proposed amended petition attached.

5. If Petitioner fails to file a response, as outlined here, or a motion for leave to amend **on or before March 9, 2010**, the court will address the Warden's motion for summary judgment with the response that has already been filed by appointed counsel.

SO ORDERED.

/s/ Joseph A. DiClerico, Jr.
Joseph A. DiClerico, Jr.
United States District Judge

January 26, 2010

cc: Jorel Booker, Esq.
Oliver Hooper
Elizabeth Woodcock, Esq.